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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/840,288 04/14/97 COMPADRE C 023533/102

EXAMINER
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IM31/0804

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CHIN. P.	ART UNIT	PAPER NUMBER
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1731

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DATE MAILED: 08/04/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 MONTHS month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- ☐ Of the above, claim(s) 27-30 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-26 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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### **DETAILED ACTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to a method, classified in class 426, subclass 332.
- II. Claims 27-30, drawn to composition, classified in class 424, subclass 405.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in materially different process such a textile treatment for rendering the textile antistatic or as a softener for paper.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Jayme Huleatt on 6/25/98 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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### DETAILED ACTION

1. Claims 1-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application

No. 08/631,578. Although the conflicting claims are not identical, they are not patentably distinct from each other because of an obvious difference in scope between the claimed inventions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claims 1-11 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lattin et al (5,366,983).

Lattin et al discloses a process for removing and preventing salmonella contamination of meat products by contacting the meat product with a quaternary ammonium compound as claimed. Since Lattin et al treats the same meat product at the same concentrations, bacteria and microorganisms which are known to contaminate foods other than salmonella would have been inherently removed and prevented from contaminating the meat.

3. Claims 12 and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lattin et al.

The limitation of Claim 12 would have been an obvious matter of optimizing the contact time for effective removal of the microbial contaminant.

In regard to claims 14-26, it would have been obvious to subject all food items such as those claimed which are well known to be subjected of contamination by harmful

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microorganisms. The quaternary ammonium compounds in general are well known to be effective against a wide variety of microorganisms, see for example Thompson (2,756,647), and the prior art cited by Applicant which show that quaternary ammonium compounds are well known sanitizers or disinfectants. Thus it would have been obvious to wash any food item with a quaternary ammonium compound with the reasonable expectation that microbial contamination removed, killed or prevented.

4. The prior art cited by Applicant have been considered and made of record, note attached PTO-1449.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Chin whose telephone number is (703) 308-2046.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



PETER CHIN  
PRIMARY EXAMINER  
GROUP 1200 1731